IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

ELIAS S. A. DE LIMA, ELIAS A. DE LIMA, AND EDWARD DE LIMA, COMPOSING THE FIRM OF D. A. DE LIMA & CO., PLAINTIFFS IN ERROR,

vs.

GEORGE R. BIDWELL, DEFENDANT IN ERROR.

MOTION TO ADVANCE NO. 456.

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Motion to advance. No. 456.

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UNITED STATES OF AMERICA, ss:

The plaintiffs in error respectfully move the court to advance the above-entitled cause upon the docket, and set it down for hearing on such early day as shall be most convenient to the court and satisfactory to the Attorney-General, on the ground that it is one of great public interest, involving the legality of the imposition of customs duties at the port of New York on sugars brought into such port from the island of Porto Rico during the months of June and September, 1899, that is to say, since the ratification and proclamation of the treaty of peace between the Kingdom of Spain and the United States.

This cause was a common-law action brought by the plaintiffs in error in the supreme court of the State of New York to recover back from the defendant in error, who was and is the collector of customs at the port of New York, certain sums of money which the complaint alleges the said plaintiffs "were (by the said defendant) unlawfully and against their will and in spite of their formal protest duly made, compelled to pay and did pay, in order to obtain possession of the said sugars, to which they were entitled, but which the said defendant, enabled so to do by the power and authority of his said office, had detained, was detaining, and threatened to continue to detain from them, exacting as a condition to the delivery thereof such payment of said alleged duties, whereas the said sugars were not liable to duty, the same not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States in that regard, be admitted to free entry in any port of the United States."

The said action was on the 22d of March, 1900, by writ of certiorari sued out by Henry L. Burnett, U. S. attorney, attorney for the defendant, removed into the circuit court of the United States for the southern district of New York, second circuit.

Thereafter, on the 2d day of April, 1900, the said U. S. attorney, as attorney for the defendant, entered a demurrer to the said complaint, upon the following alleged grounds:

> "First. Upon the ground that it does not state facts sufficient to constitute a cause of action against the defendant."
>
> "Second. Upon the ground that this court has no jurisdiction of the cause of action alleged in said complaint against the defendant."

Thereafter, on the 16th day of October, 1900, the said circuit court made and filed a decree sustaining the said demurrer *upon* BOTH *the grounds* therein stated and dismissing the complaint, judgment to that effect having been signed on the 17th day of October, 1900.

To review the said judgment the cause has been brought to this court by writ of error, and is No. 486 on the docket.

We understand on consultation with Mr. Attorney-General that he prefers to argue what he deems the fundamental question raised in the Goetze and Fourteen Diamonds cases by itself and is not willing at this late day to prepare to argue any other question, and in deference to his wishes we move to have the case of *De Lima* v. *Bidwell* assigned for an early day subsequent to the date for which the other two cases have been set for argument. The case of *De Lima* v. *Bidwell* raises the same fundamental question as the other two cases, but it also raises questions of procedure and jurisdiction. Counsel did not think that it was proper to proceed under the customs administrative act, because the power of the collector and appraisers thereunder seems to be limited to questions of classification of merchandise and rates of duties *in cases where it is* ADMITTED *that the goods have actually been imported, i. e.*, brought into the United States from a foreign country. But in this case that is the very question involved, *i. e.*, whether the goods have been brought into New York from a foreign country, or, in other words, whether Porto Rico is or is not a foreign country in the sense of the Dingley Act, or is not a part of the United States in the sense of the Constitution. Article I, § 8, paragraph 1.

On the question of procedure, this court, construing the customs administrative act, *in re* Fassett, 142 U. S., 479, 487, said:

> "The appeal provided for in section 15 brings up for review in court *only* the decision of the board of general appraisers as to the construction of the law, and the facts *respecting the classification of* IMPORTED *merchandise*, and the rate of duty imposed thereon under such classification. *It does not bring up for review* the question of WHETHER *an article* IS *imported merchandise* OR NOT; nor, under section 15, is the ascertainment of *that fact* such a decision as is provided for. The decisions of the collector from which appeals are provided for by section 14 are *only* decisions as to 'the rate and amount' of duties charged upon IMPORTED MERCHANDISE and decisions as to dutiable costs and charges, and decisions as to fees and exactions of whatever character.
>
> "*Nor can the court of review pass upon any question which the collector had not original authority to determine.* The collector has no authority to make any determination regarding any article which is not *imported merchandise;* and if the vessel in question here is not imported merchandise, *the court of review would have* NO JURISDICTION *to determine any matter regarding that question,*

and could not determine the very fact which is in issue under the libel in the district court, on which the right of the libellant depends.

"Under the customs administrative act the libellant, in order to have the benefit of proceedings thereunder, *must concede that the vessel is imported merchandise*, which is the very question put in contention under the libel, and must make entry of her as IMPORTED *merchandise* with an invoice and consular certificate to that effect and thus estop himself from maintaining the fact which he alleges in his libel, that she is NOT *imported* merchandise."

It is therefore respectfully submitted that the case is one which may properly be advanced for an early hearing, the question which it gives occasion and opportunity to decide upon procedure and the merits of the case being one of great public interest and importance. Oct. 25th, 1900.

COUDERT BROTHERS,
Attorneys for Plaintiff in Error.